

82KATROPPs

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x4 UNITED STATES OF AMERICA,
5
6 v. 05 CR 1192 (NRB)

5 ROBERT TROSTEN,

6 Defendant.
7 -----x8 New York, N.Y.
9 February 20, 2008
10 5:30 p.m.

11 Before:

12 HON. NAOMI REICE BUCHWALD
13 District Judge

14 APPEARANCES

15 MICHAEL J. GARCIA
16 Acting United States Attorney for the
17 Southern District of New York
18 BY: CHRISTOPHER GARCIA
19 NEIL BAROFSKY
20 Assistant United States Attorneys21 MORVILLO, ABRAMOWITZ, GRAND, IASON,
22 ANELLO & BOHRER, P.C.23 Attorneys for Defendant
24 BY: ROBERT G. MORVILLO
CHRISTOPHER J. MORVILLO
RACHEL M. KORENBLAT25 Also Present: Robert W. Manchak, Criminal Investigator
Rua M. Kelly, Assistant United States Attorney
Mary Beth Allen, Paralegal
United States Attorney's Office

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82KATROPPs

1 (In open court)

2 THE CLERK: The case is United States v. Robert
3 Trosten, Docket No. 05 Crim. 1192. Is the government ready to
4 proceed?5 MR. GARCIA: Yes. Good afternoon, your Honor.
6 Christopher Garcia on behalf of the government. With me at
7 counsel table is Assistant United States Attorney Neil
8 Barofsky. And with the Court's permission, also at counsel
9 table: Robert Manchak, criminal investigator with our office;
10 Mary Beth Allen, paralegal with our office; and also Rua Kelly,
11 also an Assistant United States Attorney with our office.12 THE CLERK: And is the defense attorney ready to
13 proceed?14 MR. R. MORVILLE: We are, your Honor. Mr. Trosten is
15 here. For the record, my name is Robert Morville. I represent
16 Mr. Trosten. And seated to my left is Christopher Morville, my
17 co-counsel.

18 THE DEFENDANT: Good afternoon.

19 THE COURT: Good afternoon, Mr. Morville.

20 MR. R. MORVILLE: I think it's my application, your
21 Honor. We would apply to the Court for permission to withdraw
22 our previously entered plea of not guilty as to Counts One,
23 Two, Seven, Fifteen, and Seventeen of the indictment and enter
24 a plea of guilty.

25 THE COURT: Mr. Trosten, if you will remain standing

82KATROPPs

1 for a moment, would you raise your right hand, please.

2 Do you solemnly swear that the answers to the
3 questions I am about to ask you will be the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: Would you state your full name for me,
7 please.

8 THE DEFENDANT: Robert Charles Trosten, Sr.

9 THE COURT: And, Mr. Trosten, how old are you?

10 THE DEFENDANT: 38.

11 THE COURT: Why don't you sit down.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Trosten, what was the last grade or
14 level of school that you completed?

15 THE DEFENDANT: I finished undergraduate college with
16 a B.S. in accounting.

17 THE COURT: At this time are you under the care of a
18 doctor or psychiatrist?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: Which?

21 THE DEFENDANT: A doctor -- a psychiatrist.

22 THE COURT: And what condition is he treating you for?

23 THE DEFENDANT: Dr. Neiman is treating me for sleep
24 and anxiety on occasion.

25 THE COURT: And are you taking any medicine as a

82KATROPPs

1 result of or in connection with that treatment?

2 THE DEFENDANT: I take sleep medicine as needed and
3 anxiety medicine as needed.

4 THE COURT: At the moment, are you under the influence
5 of any drug or alcohol?

6 THE DEFENDANT: No, I'm not.

7 THE COURT: Have you in fact ever been hospitalized or
8 treated for either alcoholism or narcotics addiction?

9 THE DEFENDANT: No, I have not.

10 THE COURT: And how are you feeling physically today?

11 THE DEFENDANT: I feel great.

12 THE COURT: Have you had sufficient time to discuss
13 the charges against you and your proposed plea with your
14 counsel, the Messrs. Morvillo?

15 THE DEFENDANT: I have, yes.

16 THE COURT: And have you been satisfied with the
17 advice and counsel that they have given to you?

18 THE DEFENDANT: I am.

19 THE COURT: And at this time, are you ready to change
20 your plea?

21 THE DEFENDANT: I am indeed.

22 THE COURT: And what is your plea at the moment?
23 Guilty or not guilty?

24 THE DEFENDANT: Guilty.

25 THE COURT: All right. Mr. Trosten, in order to

82KATROPPs

1 determine whether your plea is voluntary and made with a full
2 understanding of the charges against you and the consequences
3 of your plea, I will make certain statements to you and I will
4 ask you certain questions. I want you to understand that I
5 need not accept your plea unless I am satisfied that you are in
6 fact guilty and that you fully understand your rights.

7 Now, Count One of the indictment charges you with a
8 conspiracy to commit securities fraud, wire fraud, bank fraud,
9 and money laundering, and to make false filings with the SEC
10 and material misstatements to auditors. This crime carries a
11 maximum statutory penalty of five years in prison, a maximum
12 fine of the greatest of \$250,000 or twice the gross pecuniary
13 gain derived from the offense or twice the gross pecuniary loss
14 to a person other than yourself as a result of the offense, a
15 \$100 special assessment, and a mandatory term of supervised
16 release of three years. Do you understand that those are the
17 charges in Count One and the maximum statutory penalties
18 provided for that charge?

19 THE DEFENDANT: I do.

20 THE COURT: Count Two charges you with securities
21 fraud. And this crime carries a maximum possible sentence of
22 20 years in prison, a maximum fine of the greatest of \$5
23 million or twice the gross pecuniary loss derived from the
24 offense, or twice the gross pecuniary loss -- I'm sorry. I
25 think I said twice pecuniary loss. It's twice the gross

82KATROPPs

1 pecuniary gain derived from the offense or twice the gross
2 pecuniary loss to a person other than yourself as a result of
3 the offense, a \$100 special assessment, and a maximum term of
4 supervised release of three years. Do you understand that
5 those are the charges in Count Two and the maximum possible
6 penalties provided by law?

7 THE DEFENDANT: I do.

8 THE COURT: Count Seven charges you with wire fraud,
9 and this crime carries a maximum possible sentence of 20 years
10 in prison, a maximum fine of the greatest of \$250,000 or twice
11 the gross pecuniary gain derived from the offense or twice the
12 gross pecuniary loss to a person other than yourself as a
13 result of the offense, a \$100 special assessment, and a maximum
14 term of supervised release of three years. Do you understand
15 that those are the charges in Count Seven and the maximum
16 statutory penalty provided for the crime of wire fraud?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: Count Fifteen charges you with bank fraud.
19 And this crime carries a maximum possible sentence of 30 years
20 in prison, a maximum fine of the greatest of \$250,000 or twice
21 the gross pecuniary gain derived from the offense or twice the
22 gross pecuniary loss to a person other than yourself as a
23 result of the offense, a \$100 special assessment, and a
24 mandatory -- or a maximum term of supervised release of five
25 years. Do you understand that those are the charges in Count

82KATROPPs

1 Fifteen and the maximum statutory penalty provided therefor?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Count Seventeen charges you with money
4 laundering, and this crime carries a maximum sentence of ten
5 years in prison, a maximum fine of the greatest of \$250,000 or
6 twice the gross pecuniary gain derived from the offense or
7 twice the gross pecuniary loss to a person other than yourself
8 as a result of the offense, a \$100 mandatory special
9 assessment, and a maximum supervised release term of three
10 years. Do you understand that that is the charge in Count
11 Seventeen and the maximum penalty provided for it by statute?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: And do you understand that, in addition to
14 the punishments which I just described, that the Court must
15 order restitution with respect to the charges in the
16 indictment?

17 THE DEFENDANT: I'm sorry, your Honor?

18 THE COURT: I said, do you understand that in addition
19 to the punishments that I've just described, that the Court
20 must order restitution --

21 THE DEFENDANT: I do.

22 THE COURT: -- with respect to the charges to which
23 you are pleading?

24 THE DEFENDANT: I do.

25 THE COURT: Do you understand that as part of your

82KATROPPs

1 plea agreement, that you have admitted the forfeiture
2 allegations in the indictment and that you agree to forfeit to
3 the United States the sum of \$2,400,000,000, as well as all the
4 specific property listed in schedule A to your plea agreement?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: And that as part of this plea agreement,
7 that you have agreed to not file any claims for any of the
8 forfeited property, and also to take such steps as necessary to
9 clear title to the specific property?

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: And do you understand that you have the
12 right to plead not guilty and the right to a trial on the
13 charges against you and in fact the right to a jury trial?

14 THE DEFENDANT: I do.

15 THE COURT: At this time, Mr. Garcia, I would ask you,
16 please, to recite the elements of the crimes to which
17 Mr. Trosten is pleading.

18 MR. GARCIA: Yes, your Honor. With respect to Count
19 One, there are three elements: first, that there existed an
20 agreement or understanding to commit the objects charged;
21 second, that Mr. Trosten knowingly became a member of that
22 agreement or understanding; and, third, that one of the
23 co-conspirators knowingly committed at least one overt act in
24 furtherance of the conspiracy during the life of the
25 conspiracy.

82KATROPPs

1 With respect to Count Two, the securities fraud count,
2 the first element is that Mr. Trosten, in connection with the
3 purchase or sale of securities, here the notes described in
4 Count Two, did one or more of the following: employed a device,
5 scheme, or artifice to defraud; or made an untrue statement of
6 material fact; or omitted to state a material fact which made
7 what was said, under the circumstances, misleading; or engaged
8 in an act, practice, or course of business that operated or
9 would operate as a fraud or deceit upon a purchaser or seller.
10 Second, that Mr. Trosten acted knowingly, willfully, and with
11 intent to defraud. And, third, that Mr. Trosten used or caused
12 to be used any means or instruments of transportation or
13 communication in interstate commerce, or the use of the mails,
14 in furtherance of the fraudulent conduct.

15 With respect to Count Seven, the wire fraud count,
16 there are five elements: first, that a scheme to defraud
17 existed; second, that Mr. Trosten must have participated in the
18 scheme with intent to defraud; third, that misrepresentations
19 or omissions must have related to material facts; fourth, that
20 the scheme was executed to obtain money or property; and
21 finally, that in executing the scheme, Mr. Trosten used or
22 caused to be used interstate wires, or the use of such wires
23 were reasonably foreseeable to him, as listed in the
24 indictment. And here, your Honor, with respect to Count Seven,
25 it is alleged that on June 22, 2004, Mr. Trosten sent an

82KATROPPs

1 e-mail.

2 With respect to Count Fifteen, the bank fraud charge,
3 your Honor, there are three elements: first, that there was a
4 scheme to defraud a bank by means of materially false or
5 fraudulent pretenses, representations, or promises; second,
6 that Mr. Trosten executed or attempted to execute the scheme
7 with intent to defraud the bank; and, third, that at the time
8 of the execution of the scheme, the bank had its deposits
9 insured by the Federal Deposit Insurance Corporation.

10 At this time, your Honor, the government would proffer
11 and represent that HSBC, which is identified in the indictment,
12 has its deposits, and had its deposits at the relevant period,
13 insured by the Federal Deposit Insurance Corporation.

14 Finally, your Honor, with respect to Count Seventeen,
15 the money laundering count, there are three elements: first,
16 that Mr. Trosten engaged or attempted to engage in monetary
17 transactions involving criminally derived property of a value
18 greater than \$10,000; second, that the property involved in the
19 monetary transaction, or attempted transaction, was in fact
20 derived from specified unlawful activity; finally, that
21 Mr. Trosten acted knowingly. And with respect to this count,
22 the specified unlawful activities are the wire fraud, bank
23 fraud, and securities fraud otherwise charged.

24 THE COURT: Mr. Trosten, do you understand that if you
25 pled not guilty and went to trial, that the burden would be on

82KATROPPs

1 the government to prove each and every element of the crimes
2 charged beyond a reasonable doubt in order to convict you?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that at a trial, you
5 would have the right to be represented by an attorney at all
6 stages of the proceeding and if necessary an attorney would be
7 appointed for you?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Do you understand that at a trial you
10 would have the right to confront and cross-examine witnesses
11 against you and the right not to be compelled to incriminate
12 yourself?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And do you understand that at a trial you
15 would be presumed innocent until such time, if ever, the
16 government established your guilt by competent evidence to the
17 satisfaction of the trier of fact beyond a reasonable doubt?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: And do you understand that at a trial, you
20 would have the right to testify and would also be entitled to
21 compulsory process, in other words, the right to call other
22 witnesses on your behalf?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: And do you understand that if your plea is
25 accepted, that there will be no further trial of any kind, so

82KATROPPs

1 that by pleading guilty, you are waiving your right to a trial?

2 THE DEFENDANT: I do.

3 THE COURT: Do you understand that if you are
4 sentenced to a period of supervised release and if you violate
5 the terms of your supervised release, that an additional period
6 of jail time may be imposed without credit for the time that
7 you had previously spent on supervised release?

8 THE DEFENDANT: I do.

9 THE COURT: And do you understand that in connection
10 with your plea of guilty, that the Court may ask you certain
11 questions about the offense to which you have pled, and if you
12 answer those questions under oath and on the record and in the
13 presence of your lawyer, that your answers if false may later
14 be used against you in a prosecution for perjury or false
15 statement?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: And do you understand that, in determining
18 your sentence, that the Court is obligated to calculate the
19 applicable sentencing guidelines range and to consider that
20 range and possible departures under the guidelines, as well as
21 other factors concerning the nature and circumstance of the
22 offense and the history and characteristics of the defendant?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Mr. Trosten, did you sign a plea agreement
25 earlier today?

82KATROPPs

1 THE DEFENDANT: I did, your Honor.

2 THE COURT: And before you signed it, did you discuss
3 it with your lawyers?

4 THE DEFENDANT: I did.

5 THE COURT: And before you signed it, did you read it?

6 THE DEFENDANT: I did, your Honor.

7 THE COURT: Let's just put the plea agreement to one
8 side for a moment. Apart from the plea agreement, have any
9 threats or promises been made to you to make you plead guilty?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Again, apart from the plea agreement, have
12 any understandings or promises been made to you concerning the
13 sentence that you will receive?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Is your plea voluntary?

16 THE DEFENDANT: Yes, it is.

17 THE COURT: I would like to review a few portions of
18 the plea agreement with you. Do you understand that pursuant
19 to this plea agreement, that you have undertaken to truthfully
20 and completely disclose all information about yourself and
21 others as required of you by the U.S. Attorney's Office; and
22 that you have agreed to fully cooperate with the U.S.
23 Attorney's Office, the United States Postal Inspection Service,
24 the Securities and Exchange Commission, and any other law
25 enforcement agency designated by the Office; that you have

82KATROPPs

1 agreed to attend all meetings as your presence is requested,
2 and to provide to the U.S. Attorney's Office any document or
3 other tangible evidence relating to any inquiry from the U.S.
4 Attorney's Office or other law enforcement agencies; that you
5 have agreed to truthfully testify before the grand jury and at
6 any other trial or court proceeding; that you have agreed to
7 fully disclose to the U.S. Attorney's Office any crimes that
8 you have committed and any civil or criminal proceedings in
9 which you have been or are a subject target or a witness; and
10 that you have further agreed to commit no further crimes
11 whatsoever?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And do you understand that the U.S.
14 Attorney's Office has no authority to agree not to prosecute
15 you for any possible criminal tax violations?

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: And do you understand that if you fully
18 comply with this agreement, that you will not be further
19 prosecuted by the U.S. Attorney's Office for any crime related
20 to your participation in the crimes described in the
21 indictment, Counts One, Two, Seven, Fifteen, and Seventeen,
22 except for a possible criminal tax violation?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And are you aware that this agreement
25 doesn't bind any other federal, state, or local prosecuting

82KATROPPs

1 office?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And do you understand further that the
4 sentence that you will receive is within the sole discretion of
5 the Court?

6 THE DEFENDANT: Yes, your Honor, I do.

7 THE COURT: And do you understand that if the United
8 States Attorney's Office determines that you have provided
9 substantial assistance in an investigation or prosecution and
10 fully complied with the understandings specified in this plea
11 agreement, that the U.S. Attorney's Office will file a motion
12 pursuant to Section 5K1.1 of the guidelines, requesting that
13 you be sentenced in accordance with the factors set forth in
14 that section?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: And do you understand that even if the
17 U.S. Attorney makes such a motion, that the issue of sentencing
18 remains within the discretion of the Court?

19 THE DEFENDANT: I do.

20 THE COURT: And do you understand that if the U.S.
21 Attorney's Office determines that you have not provided
22 substantial assistance, that they are released of any
23 obligation to file a 5K1.1 letter?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: And do you understand that, should you

82KATROPPs

1 commit any further crimes or should it be determined that you
2 have given false, incomplete, or misleading testimony or
3 information, that you are thereafter subject to prosecution for
4 additional federal crimes?

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: Do you understand that if it is determined
7 that you have committed further crimes or given false or
8 misleading testimony or otherwise violated this agreement, that
9 all statements made by you to the United States Attorney's
10 Office can be used against you in a subsequent prosecution?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And are you entering this plea because you
13 are in fact guilty?

14 THE DEFENDANT: I am, your Honor.

15 THE COURT: And do you understand that as part of this
16 plea agreement, that you are waiving any right you might have
17 to have the government preserve any physical evidence for
18 future DNA testing or any right you might have for DNA testing
19 at the present time?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And do you understand that this agreement
22 takes the place of any prior understanding that you may have
23 reached with the United States Attorney's Office and that there
24 are no conditions beyond those set forth in this written
25 agreement and that there cannot be any additional

82KATROPPs

1 understandings that are not entered into in writing and signed?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Trosten, did you commit the offenses
4 that you are pleading guilty to?

5 THE DEFENDANT: I did, your Honor.

6 THE COURT: Would you tell me, please, what you did.

7 THE DEFENDANT: Your Honor, first, I just would like
8 to state for the record that, when I said I felt great, it was
9 relating to medicines that I had taken, as opposed to feeling
10 ill because of those medicines, not because of my conduct,
11 which I deeply regret, your Honor.

12 THE COURT: I would just like -- are you under the
13 influence of any medicine today?

14 THE DEFENDANT: I am not, no. No.

15 THE COURT: OK. And you have not had any trouble
16 following any of the questions I have asked you?

17 THE DEFENDANT: No, I have not. No, I have not.

18 Your Honor, while I was employed at Refco, I agreed
19 with other Refco executives to hide the true nature of Refco's
20 finances on Refco's financial statements. I knew that Refco's
21 financial statements did not accurately reflect Refco's
22 financial condition, because the financial statements did not
23 disclose the full amount that Refco Group Holdings, Inc., a
24 related party, owed to Refco. I understood that the RGHI
25 receivable was underreported because Philip Bennett, Refco's

82KATROPPs

1 former chief executive officer, and other Refco executives,
2 including me, were involved in a series of transactions at the
3 end of Refco's financial reporting periods to make it appear as
4 if a receivable was due from third-party customers rather than
5 from a related party.

6 The RGHI receivable was composed of, amongst other
7 things, historic customer losses, bad debts, and expenses that
8 RGHI incurred on behalf of Refco.

9 In addition, I participated in a number of
10 transactions that padded or inflated Refco's income. For
11 example, I participated in transactions that shifted expenses
12 off the books of Refco and onto the books of Refco Group
13 Holdings, Inc.

14 I, along with other Refco executives, agreed to
15 conceal the true size and nature of the RGHI receivable from,
16 amongst others, Refco's auditors, Thomas H. Lee Partners; HSBC,
17 which, in 2004, participated in Refco's senior secured credit
18 facility, as referenced in paragraph 14 -- I'm sorry --
19 paragraph 41 and Count Fifteen of the indictment; and investors
20 who purchased bonds that Refco issued in 2004, as referenced in
21 Count Two of the indictment.

22 I left the company in August of 2004, one year before
23 the IPO of Refco. I and other Refco executives used the
24 interstate wires to accomplish these acts within this district,
25 as referenced in Count Seven of the indictment.

82KATROPPs

1 Furthermore, I received funds obtained from the
2 transaction with Thomas H. Lee Partners, referenced in
3 paragraph 34 of the indictment, which I knew were proceeds from
4 unlawful activity, as referenced in Count Seventeen.

5 The RGHI receivable and the transactions used to
6 conceal it were material information that Refco investors and
7 lenders would have wanted to know before investing in or
8 lending money to Refco.

9 I knew that obtaining funds from Refco investors and
10 lenders based on misleading financial information was wrong.

11 Excuse me.

12 Your Honor, I take full responsibility for my actions
13 and my conduct.

14 I wish to apologize to my family and those that I
15 harmed by my conduct, which I deeply and sincerely regret, your
16 Honor.

17 Thank you.

18 THE COURT: Mr. Garcia, is there anything else that
19 you wish me to ask Mr. Trosten?

20 MR. GARCIA: No, your Honor.

21 THE COURT: Mr. Trosten, do you still wish to plead
22 guilty?

23 THE DEFENDANT: I do, your Honor.

24 THE COURT: Mr. Morvillo, do you know of any reason
25 that Mr. Trosten ought not to plead guilty?

82KATROPPs

1 MR. R. MORVILLO: I do not, your Honor.

2 THE COURT: All right. Mr. Trosten, I am satisfied
3 that you understand the nature of the charge against you and
4 the consequences of your plea, and that your plea is made
5 voluntarily and knowingly, and that there is a factual basis
6 for your plea. I will therefore accept your plea of guilty.

7 Mr. Garcia, do you want to give me a control date?

8 MR. GARCIA: Your Honor, respectfully, the government
9 would request about a year for a control date.

10 THE COURT: Let's just see if -- OK. Well, February
11 20, 2009 is a Friday. So you can write to me then.

12 All right. Is there anything else at this time?

13 MR. GARCIA: Nothing more, your Honor, from the
14 government.

15 THE COURT: Mr. Morville?

16 MR. R. MORVILLO: Nothing, your Honor. Thank you for
17 accommodating my schedule by sitting as late as you are.

18 THE COURT: We're always here at this time.

19 MR. GARCIA: Thank you, Judge.

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